

CHAPTER 5: BARGAINING TECHNIQUES

Learning Objectives

At the end of this chapter you will be able to:

Primary Learning Objective

Apply the bargaining techniques.

Classroom Learning Objective 5/1

Aim high.

Classroom Learning Objective 5/2

Give yourself room to compromise.

Classroom Learning Objective 5/3

Do not volunteer weaknesses.

Classroom Learning Objective 5/4

Satisfy the non-price needs.

Classroom Learning Objective 5/5

Use concessions wisely.

Classroom Learning Objective 5/6

Put the pressure on the other side.

Classroom Learning Objective 5/7

Use the power of patience.

Classroom Learning Objective 5/8

Be willing to walk away from or back to negotiations.

Classroom Learning Objective 5/9

Say it right.

Classroom Learning Objective 5/10

Be prepared.

Contents and Procedures

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5.0 Introduction

Techniques That Win

Successful negotiators use a variety of different negotiation skills but research has shown that most winning negotiators share many universally accepted bargaining techniques. These precepts constitute the most important rules on what to do and what not to do in order to win at negotiations. Moreover, these winning precepts universally apply to all types of contract negotiations, including those bargaining sessions where there are other issues besides contract price.

5.1 Rule 1: Aim High

Relevance for Successful Negotiators

The slogan "Aim High" has a great deal of relevance for successful negotiators because the expectation level of negotiators is closely related to the outcome of the negotiations. While the expectation level is not the opening position or the asking price, it is still the gauge by which people measure their performance. Generally, the higher the expectations, the better the negotiators will ultimately perform. The reason for this relationship is that expectations influence the behavior of the negotiators and it is that behavior which influences the outcome of the bargaining session.

Relation Between Expectations and Performance

The strong correlation between expectations and performance should come as no surprise because it affects many facets of our lives. Norman Vincent Peale focused on the importance of a good attitude in his book, *The Power of Positive Thinking*. Said in another way, you have a better chance at success if you think you will do well. Conversely, people who think they will not succeed will generally do poorly. This theme is constantly demonstrated in everyday life. The basketball coach increases the odds of winning the big game by telling his players how much better their team is compared to their opponents, instead of focusing on the team's weak areas.

Research has shown a strong relationship between expectation level and the outcome of negotiations. Under identical circumstances student sellers who expected to receive more for their product (high expectation level) generally received a higher price than sellers with lower aspirations. Similarly, student buyers who had high expectation levels tended to pay less than their counterparts who faced identical pressures but had lower expectation levels.

Unknown Pressures

When first establishing expectation levels, good negotiators often go beyond their initial expectations. The reason is that negotiators, like people in general, are naturally more aware of their own personal pressures and limitations than they are aware of the pressures facing the other side. Because of this phenomenon, buyers are often willing to pay more than necessary, while sellers often expect an outcome that is less than what they could get if they brought higher expectations to the negotiation.

The sale of automobiles in the classified used car ads is a good example of this phenomenon. Private party sellers frequently sell their cars for less money than what the vehicles are actually worth because they are **more aware** of their own personal pressures along with the actual and potential problems of the vehicle being sold. Moreover, the same private party sellers have no knowledge of the pressures facing the nameless strangers who respond to their newspaper want ads. Similarly, car buyers are acutely aware of the personal pressures associated with the car purchase, such as their urgent need for transportation, and know little or nothing of the actual pressures facing the private party seller. This ignorance of the pressure facing the other party explains why the expectation levels of otherwise good negotiators are frequently not as high as they should be.

Make Positive

The key to establishing high expectations is developing positive assumptions

Assumptions about your bargaining position. Positive assumptions lead to high expectations while negative assumptions lead to low expectations.

The \$18,000 blue book value of an automobile is a good illustration of this phenomena. A seller making poor assumptions will assume that \$18,000 is the most he/she could get for the car. In contrast, sellers with positive assumptions will assume that the blue book price represents an "average" price which means some cars sold for more than \$18,000 and some for less. Sellers making the positive assumptions will believe they will be among the sellers to sell at higher than average. Making this favorable assumption will give these sellers high expectation levels.

Caution Government negotiators should avoid the tendency to base their expectations for a price approximating the amount of funds available for the contract. Government negotiators should not "Aim High" by lowering their price objective when available funding is less than their estimate of a fair and reasonable price. Likewise, the price objective should not be increased just because funds are available.

In government contract negotiations, high expectations should be more than just obtaining contracts at good prices. Government negotiators "Aim High" by striving for win/win outcomes and high expectations on non-price needs, such as quality. Having expectations of negotiating a contract price below what the government considers fair and reasonable is really aiming low and likely to result in win/lose or lose/lose outcomes.

5.2 Rule 2: Give Yourself Room to Compromise

Relevance Concession making is essential to successfully conducting most negotiations. Even the most skilled bargainers must make concessions in order to obtain successful outcomes. Yet, many negotiators are unable to make material concessions because their opening position is too close to their expectation level. Adhering to this rule can be easily achieved by establishing an opening position that allows you to compromise and still reach your objective.

When negotiating contract price, government buyers should present an initial position below what they feel the ultimate price will be in order to be in the position to make concessions before agreeing on the final price. In contrast, government sellers should ask for more than what they expect to settle at so that the other side will be satisfied with a compromise that is still within the government's range of acceptable outcomes.

Examples As Americans, we are also conditioned by our culture to expect flexibility during most types of negotiations. Accordingly, we can be penalized by having opening positions too close to our expectation level. Selling a home and buying a new car are examples of everyday transactions where the sellers are traditionally expected to settle at less than the asking price. For example, the home seller will generally have a more difficult time negotiating a \$70,000 sale price when the asking price of the home is "listed" at \$70,000. The reason for this negotiating difficulty is straightforward. Americans are culturally conditioned to expect the actual sale price for homes to be less than the asking price.

Automobile dealers have long practiced this bargaining technique by using "sticker prices" that are generally higher than what they expect their cars will actually sell for. This practice makes it easier for the salesperson to negotiate a better price for the dealership. But just as importantly, buying the car at a discount instills satisfaction in the buyer, who invariably feels that a "good deal" was obtained because the agreed upon price is below the sticker price.

Caution A word of caution in applying this rule. If you give your side "too much room to compromise," your opening position could appear unreasonable to the other side. In these instances, the technique could even be counterproductive if it causes the contractor side to view the government as a "win/lose" negotiators. Guard against this predicament by supporting your opening position with valid reasons based on fact and reasonable judgments of what is likely to occur. In government contracting, the opening position is generally known as the government minimum or what the government side sincerely believes is the lowest fair and reasonable price.

5.3 Rule 3: Do Not Volunteer Weaknesses

Rationale

Although this rule is almost common sense, it is often overlooked because most Americans are candid and forthright by nature. The basic premise of this precept is that bargainers should not volunteer information that would weaken their negotiating position or enhance the bargaining position of the other side.

Negotiators need not be dishonest in order to comply with this rule. Honesty and ethical behavior are always paramount in any government negotiating session. Yet, there are many ways to respond to questions without telling falsehoods or volunteering information detrimental to your bargaining position. Adherence to this rule can often easily be accomplished by carefully wording statements or by avoiding a direct response to the question. For example, when a car owner is asked by a prospective buyer, "Why are you selling your car?", the seller can volunteer a weakness by saying, "My car is a gas guzzler." The seller not wanting to disclose the poor gas mileage can avoid revealing the weakness and still be honest by saying "I want to get another car" or "I just want to drive something different" or "I just want to sell my car."

Examples of Rule Violations

While Rule 3 appears to be a common sense position, examples of rule violations abound in everyday life --for instance, the prospective car buyer who willingly tells the salesperson that his or her old car is no longer running and that he or she needs a car for his or her job. Volunteering this information will make it more difficult for the car buyer to negotiate a good price.

Examples also abound in government contract negotiations where Rule 3 violations weakened the bargaining positions and sometimes resulted in needlessly higher contract prices. For instance,

- Without being asked, an Air Force engineer admitted during negotiations that the contractor proposal of \$3.5 million was overly generous because the commanding general wanted the contract and \$10 million in funding was available for the work. As a result of this admission, the contracting officer believed the negotiated contract price cost the government hundreds of thousands of dollars more than necessary.
 - A Navy negotiator inadvertently divulged information on the extreme importance of completing a construction contract on time. Because of this admission, the contractor side correctly concluded that the government had a short deadline and would not have enough time to solicit other offers from competitive firms. This knowledge significantly weakened the government bargaining position, resulting in a higher than anticipated contract price.
 - An attempt by a contractor negotiator to invoke pity on his firm by disclosing that the firm was behind on payments to subcontractors backfired when the government negotiator unfairly took advantage of this weakness. Unfortunately in response to this disclosure of weakness, the "win/lose" government negotiator was able to negotiate unreasonably low contractor overhead rates.
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Summary

In summary, do not divulge information that hurts your bargaining position

unless you cannot avoid the disclosure without being dishonest. In the absence of derogatory information, the other side is naturally more inclined to perceive strength and be unaware of the weaknesses in your position.

5.4 Rule 4: Satisfy Non-price Needs

Rationale

Most negotiations will not end in agreement unless both sides are satisfied. This includes agreement on both price and non-price needs. Successful negotiators are able to identify the non-price needs of the other party and the ways to satisfy those needs. Yet, many negotiators enter negotiations with an awareness only of price issues facing both sides.

Never narrow down the objective of negotiations to just price issues. Look for non-price needs and the corresponding ways of satisfying the other party. These non-price needs are often not specified by the other side, but are nevertheless important. For example, the negotiation to buy a family-owned company includes more than just bargaining the sales price of the business. Other important non-price issues of the seller should also be addressed, such as the desire to protect the jobs of longtime employees or the retention of the family name on the business.

Non-price Needs in Government Contracting

Non-price needs are found in all government contract negotiations. For example, many contractors have cash flow problems that the government side can readily solve at little or no cost. Potential ways to satisfy this need include:

- Providing for partial deliveries with payment or acceptance for each shipment
 - Earlier effective or start date for the contract
 - Use of customary progress payments
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Summary

In short, identify the many issues and underlying needs, other than price, that exist in every negotiation. Recognize that price is often not the only issue or even the single most important issue. And just as importantly, realize that the real bargaining has to do with satisfying both the price and non-price needs of the other side.

5.5 Rule 5: Use Concessions Wisely

Rationale	Since negotiations are essentially give-and-take sessions, successful negotiators are masters in the art of giving concessions. The way in which concessions are given has paramount influence on the outcome of the negotiation. To this end, the following important precepts of successful concession-making apply.
Ask for Something in Return	Never make a concession without getting, or at the very least, asking for a concession in return. Try to make the other side reciprocate when your side makes a concession. Linking concessions will facilitate more concessions from the other side by forcing concessions that otherwise would not have been made. Moreover, this technique will also enhance the value of your concessions. Negotiators, like most people in our society, generally put a higher value on something that requires a sacrifice on their part.
Small, Slow Concessions	Concede slowly and in small amounts. Large or quick concessions tend to unnecessarily raise the expectations of the other side. When this occurs, the overly generous concession becomes counterproductive to the negotiating process. Instead of bringing the parties closer together, the increased expectations of the other side result in the two sides being farther apart. Concessions quickly given or too large can also give the other side the impression that the concessions were not that important to the giver or that the concession giver is overly anxious for a settlement. In addition, big or quick concessions often result in more of a compromise than necessary.
Avoid Splitting the Difference	<p>Just because someone wants to split the difference doesn't mean a fair settlement has been reached. Unless your negotiating objective has already been achieved when the other side offers to split, realize that you can get at least half of the difference and try to obtain an even larger concession. Remember that the one who offers to split the difference is in reality announcing a new position. When the other side refuses to split, the side making the offer cannot always easily retreat from their proposal.</p> <p>Do not auction or "ping pong" concessions by repetitive incremental concessions. For example, the government should not keep increasing the profit rate in quick response to the contractor's offer to reduce the rate in similar increments.</p>
Other Key Points of Concession Making	<p>Concessions can be used to break an impasse, to win a corresponding concession from the other side, or to conclude an agreement. In general, concessions should be used only sparingly and after careful consideration. Moreover, it is often wise to call a recess to give your side the opportunity to examine the implications of a concession that falls outside the negotiation plan.</p> <p>Other key points of concession making in government contracting are:</p> <ul style="list-style-type: none">• Let the contractor make the first concession, when appropriate.• Attempt to get the contractor to concede on issues of major importance to your side instead of just conceding on minor or insignificant points.

- In contrast, make your first concessions on issues of minor importance to the government.
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5.6 Rule 6: Put Pressure on the Other Side

Rationale	Because of the pressure inherent in every negotiation, success in negotiation stems in large part from the ability of bargainers to pressure the other side while at the same time limiting the pressure on themselves. Adherence to this rule can easily be accomplished by following some simple dictums which will reduce your stress while increasing the pressure on the other side.
Unknown Pressures Facing the Other Side	Believe in the unknown pressure facing the other side by realizing that there is more pressure on the other side than what is readily apparent. As stated earlier in Rule 1, bargainers have more information on their own position and, consequently, are naturally more aware of their own limitations than of the factors stressing the other side. Just believing that there are unknown pressures facing the other side will alleviate some of the pressure on your position.
Resist Artificial Pressures	Do not let artificial pressures, such as the perceived stature or the impressive credentials of the other side, increase the negotiating pressure on yourself. Nicely furnished offices in prestigious locations along with great sounding job titles should be of no help at negotiations unless the other bargainers are influenced by these fake pressures. For example, the fact that your bargaining counterpart is a company vice-president should not be any more stressful than if you were negotiating with the firm's janitor. I once worked for a company where all the salesmen were "vice-presidents" because the perceived stature of this job title often gave them leverage over many of the insecure buyers they negotiated with. Similarly, don't let certifications adorning walls or listed on calling cards intimidate you into thinking that owning the credentials makes that person an expert on crucial factors that can affect your position in the negotiation. Conversely, use artificial pressures of your own when negotiating.
Refer to Competitive Alternatives	In sole source negotiations, the government can put a great deal of pressure on the other side by referring to alternative choices or potential competition. Alternatives – such as canceling and resoliciting or buying in smaller quantities – always exist. Referring to potential competitors when they exist can also be effective. For example, a government negotiator could discuss changes in the requirement that could open the door to other competitors. Just the hint of potential competition often pressures the contractor to be more conciliatory and innovative in meeting the government needs.

5.7 Rule 7: Use the Power of Patience

Rationale	Although the virtue of patience sounds like motherhood and apple pie, negotiators need this important characteristic to help ensure success at the bargaining table. Practicing patience is often easier to say than to do because of the pressure inherent to every negotiation. The quicker the negotiations conclude, the sooner this natural pressure is relieved. Nonetheless, good negotiators use patience to their advantage to increase the stress on the other side while waiting for a better deal.
Cultural Barriers	American negotiators are generally more impatient compared to negotiators from other societies. Patience is even sometimes seen as an undesirable quality by the American culture. In contrast, societies known to value patience as a favorable virtue, such as the Japanese and Russians, produce negotiators whose patience enhances their bargaining skill. In fact, the Japanese believe that only a fool would quickly conclude a deal. Many winning American negotiators who value patience would agree with that assessment.
Benefits	<p>Practicing patience also displays resolve or firmness in your position by demonstrating to the other side that you are not overly anxious for a settlement. The willingness to deliberately proceed through negotiations and, when necessary, delay the proceedings also dissipates the emotional feelings that surround certain issues. Quite often the extra negotiating time taken by patient government negotiators translates into thousands and even millions of dollars in additional concessions. In one such case, the government side negotiated a \$40 million reduction on a \$500 million contract by waiting for 2 days – instead of agreeing on price on the same day requested by of the program office.</p> <p>Research has shown that the best deal for both sides takes time. Under a controlled environment where both sets of negotiators had access to the same facts, the quickest negotiations generally tended to have unbalanced or win/lose outcomes in favor of either the buyer or the seller. In contrast, the results of longer negotiation sessions for the same transaction tended to be more even. These results demonstrated that achieving balanced outcomes takes longer because both sides need time to explain their positions and develop ways to satisfy the other side.</p>

5.8 Rule 8: Be Willing to Walk Away From or Back to Negotiations

Deadlocks Can't Always be Avoided

Deadlock cannot always be avoided and, in fact, is sometimes necessary when dealing with unfair or unreasonable parties. Even the best negotiators sometimes fail to come to a mutual agreement and experience this lose/lose outcome. However, good negotiators are neither afraid to walk away from bad deals nor too proud to return to the negotiation table once they realize a better deal could not have been obtained.

Government negotiators should have the resolve to walk away from what a reasonable person would consider to be a bad deal. Emotions or time constraints should not prevent objective thinking or acting in the best interests of the government. The willingness to deliberately deadlock when a fair deal cannot be obtained is extremely important because this attitude gives bargainers the resolve to credibly apply other bargaining techniques.

Returning After an Impasse

Successful negotiators should also have the ability to come back to the negotiation table after a deadlock. Once they learn that a better deal cannot be obtained in a timely fashion elsewhere, good negotiators do not let pride get in the way of renewing negotiations. Although it is usually better to let the other side make the first move after deadlock, you cannot be sure that will ultimately happen. But even when you make the first move, the other side will often welcome it because of the severe pressure on both parties caused by the deadlock.

Risks Associated with Walkouts

Walkouts or even the threat of walkouts may be used to advantage during the conduct of the negotiation, but not without some risk. The risk is that it may be very difficult to get the negotiation started again and back on track. If your walkout or threat to walkout leads to a concession, it is a successful technique. If the walkout fails, however and your position is weakened because an extreme technique did not work, reconciliation will be difficult. Whenever a negotiation conference has reached a point where you think you should terminate discussion and walk out, consider the impact your walkout will have. When you believe the other side will perceive the walkout as a clear indication they should be more flexible, then the walkout may be appropriate. When the walkout would be perceived as a win/lose ploy, then do not walk out unless your side has first tried everything else.

Strategies for Forestalling Walkouts

When you believe that a walkout by the contractor is imminent, it is probably advisable for you to try to forestall it. You could suggest a break or maybe even an overnight recess, with both parties having time to think things over and review their positions. Sometimes, it is even best to let the contractor walk out as a basis for emphasizing their unreasonableness. In any event, always remain cordial and express a willingness to reopen negotiations again if the contractor reconsidered. A walkout or threatened walkout should never force the government side to make unreasonable compromises.

5.9 Rule 9: Say It Right

Relevance	<p>The time-worn axiom, "It's not what you say but how you say it," aptly applies to the way successful negotiators communicate to their counterparts on the other side. The importance of good interpersonal relationships between opposing negotiators on the outcome of negotiation cannot be overemphasized. The reason for this is simple: Even the most generous offers may be refused when the feelings on the other side are ruffled.</p>
Importance of Word Choice	<p>Use extreme care in your choice of words by using nonprovocative terms instead of their more provocative synonyms. For instance, use "resolute" instead of "stubborn" or "uninformed" rather than "stupid."</p> <p>Be polite and display respect for the contractor. Always state disagreements in a tactful and businesslike manner instead of responding in a way that may appear as a personal attack. For example, a response to an unacceptable offer might be "Thanks anyway but the government cannot accept that," instead of a personal remark such as "That offer is an insult to my intelligence." Using discourteous or disrespectful language only upsets the other side and makes it that much harder to obtain good deals.</p>
Example of a Rule Violation	<p>A real-life example of the damage attributable to a "Say It Right" violation occurred when the government made a true but derogatory opening remark about a member of the contractor team. Since this was said at the start of bargaining, an adversarial tone was thus set for the remainder of the negotiation. The offended contractor resisted even the most reasonable requests, not because of the fairness or logic involved but because of the hurt feelings caused by the damaging remark.</p>
Key Points	<p>Make disagreements as courteous as possible by not personalizing contentious issues. A good way to do this is to never disagree using personal pronouns, such as you, me, or I. Good negotiators only use personal pronouns when they agree with the position of the other side.</p> <p>Along with the choice of words, the tone of voice is important. Be careful not to sound insincere or overly eager for a settlement; Speak in a voice that projects strength and confidence, rather than sounding tentative. Moreover, do not chance slighting the other side by saying things in a condescending or angry tone of voice.</p> <p>Finally, do not say anything that has even a remote chance of being controversial if:</p> <ul style="list-style-type: none">• It doesn't help the government position, or• It does not have a bearing on the negotiation. <p>Negotiators often make innocuous comments that they themselves do not find offensive. However, they may inadvertently upset individuals who are sensitive about the subject. An illustration of this is the seemingly inoffensive statement: "Isn't it great that the Cubs won." Even this innocuous remark could have a</p>

negative effect if the negotiator on the other side just does not like the Cubs.
Remember "Say it Right" violations occur even when you have no intention of being disrespectful or provoking the other side. The test on whether or not this rule has been violated is how the other side perceives it.

**Say It Right
Checklist**

You can use the following table as a checklist of ways to "Say It Right":

Say it Right Checklist	
	Sell yourself and your ideas. Since you are in actuality selling your negotiating position, act as polite and cordial as would a persuasive salesperson.
	Never lie or say anything dishonest.
	Only use personal pronouns (such as "you", "I", "we") when you agree with the other side. Avoid personal pronouns when you disagree.
	Don't embarrass the other side by being negative when discussing circumstances relating to your negotiating counterparts.
	Be cautious about expressing unrelated opinions. Chances are that others will disagree with these opinions more often than they will agree.
	Be sensitive to the other side and show interest in their views.
	Think before you speak and try to anticipate possible negative reactions.
	Keep it simple. Bargainers generally will not agree to things they don't understand.
	Be calm and don't lose your temper even when the other side commits "Say It Right" violations and provokes you.
	Deal from strength, use your strong points - be confident.
	Be personal, but businesslike. Learn names and use them, but be cautious about addressing the other side on a first-name basis.
	Continue to be polite even when the other side is rude or provocative.

5.10 Rule 10: Be Prepared

Importance of Preparation

The motto of scouting, "Be Prepared," applies to the conduct of successful negotiations. No amount of experience, skill, or persuasion on the part of the negotiator can fully compensate for the absence of preparation. Simply put, successful negotiators are generally the most prepared negotiators. Moreover, none of these bargaining rules can be entirely effective without adherence to this rule.

Sellers are usually more prepared than buyers, and this gives contractors an important advantage in most bargaining sessions. Although members of the contractor side may not spend any more time on this contract than the government, the cumulative preparation time they have spent selling the same product over and over again to commercial buyers often gives them an edge over individual buyers. Moreover, contractors usually know more about their relatively unique product because it is the reason they are in business and, after all, they produce it and may have even invented the deliverable. Adequate preparation by the government side is necessary to offset this significant negotiating edge.

Characteristics of Adequate Preparation

Adequate preparation for most negotiations includes a careful study of the strengths and weaknesses of both positions along with a study of the needs of the other party and the ways to satisfy those needs. Successful negotiators realize that a relatively small amount of preparation in these areas is well worth the effort. In fact, no other aspect of negotiation continually pays better returns than preparing for the upcoming bargaining session. Conversely, poor preparation adversely affects your side way out of proportion to the time saved. Since there is just no substitute for good preparation, you should never negotiate an issue unless you are adequately prepared.

5.11 Summary

Successful Negotiations

The ability to negotiate successfully is possessed by people with varying personalities, from all walks of life, and under a multitude of differing bargaining conditions. Success at negotiations is determined as much by the skill of the negotiator as the circumstances surrounding the bargaining session. Although different bargainers adhere to those techniques that work for them, most winning negotiators appear to have certain characteristics in common. Hopefully, you too will be able to improve your chances for negotiating success by applying these bargaining techniques to your professional bargaining sessions.
